

ORDINANCE NO. 89 - 23

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ENACTED TO PROTECT ENVIRONMENTALLY SENSITIVE LANDS IN THE COUNTY, TO BE KNOWN AS THE PALM BEACH COUNTY ENVIRONMENTALLY SENSITIVE LANDS ORDINANCE; PROVIDING FOR THE PROTECTION AND PRESERVATION OF ENVIRONMENTALLY SENSITIVE LANDS; PROVIDING FOR AN ENVIRONMENTAL IMPACT ASSESSMENT PROCESS; PROVIDING FOR REGULATING DEVELOPMENT; PROVIDING FOR ACQUISITION OF SUCH LANDS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR CERTAIN EXEMPTIONS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, certain geographic areas in Palm Beach County contain high-quality native upland Florida ecosystems ("environmentally sensitive lands"); and

WHEREAS, these environmentally sensitive lands provide important and valuable support services such as groundwater retention and recharge, flood and erosion control, and enhancement of air and water quality; and

WHEREAS, endangered, threatened and rare plant and animal species, and species of special concern to the State of Florida are part of, and dependent on, these environmentally sensitive lands; and

WHEREAS, these environmentally sensitive lands are part of the heritage of Palm Beach County's citizens, provide show places for visitors and enhance the overall quality and diversity of life in Palm Beach County; and

WHEREAS, alteration or destruction of these environmentally sensitive lands will cause an irreparable aesthetic, educational, scientific, and cultural loss to the citizens and visitors of Palm Beach County, and result in potential harm to and degradation of groundwater, surface waters and air quality; and

WHEREAS, environmentally sensitive lands have been identified by Palm Beach County through scientific inventory and designated by the Palm Beach County Board of County Commissioners as significant resources of countywide concern and



1 WHEREAS, the Board of County Commissioners desires to discourage the harm  
2 recited above and maintain the biological diversity of Palm Beach County by  
3 protecting these environmentally sensitive lands from degradation and loss.

4 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM  
5 BEACH COUNTY, FLORIDA that:

6 Section 1. SHORT TITLE; APPLICABILITY.

7 1.01 This Ordinance shall be known as the "Palm Beach County  
8 Environmentally Sensitive Lands Ordinance."

9 1.02 The recitations set forth in the "WHEREAS" paragraphs above are  
10 incorporated by reference herein as findings of fact upon which this Ordinance  
11 is based.

12 1.03 All provisions of this Ordinance shall be effective within the  
13 unincorporated and incorporated areas of Palm Beach County, Florida, and shall  
14 set restrictions, constraints and requirements to preserve and protect  
15 environmentally sensitive lands.

16 1.04 This Ordinance shall be liberally construed to effect the purposes  
17 set forth herein.

18 1.05 This Ordinance shall apply to the alteration, as herein defined, of  
19 land in any manner which has the potential to impact the values and functions of  
20 those sites identified as being "A" quality native uplands in the Inventory of  
21 Native Ecosystems in Palm Beach County ("environmentally sensitive lands").

22  
23 Section 2. PURPOSE.

24 The purpose of this Ordinance is to preserve and protect the values and  
25 functions of environmentally sensitive lands from land alterations that would  
26 result in the loss of these lands or significant degradation of their values and  
27 functions.

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29 Section 3. DEFINITIONS.

30 3.01 The following definitions apply within this Ordinance:

31 (a) Alteration. The result of human-caused activity which modifies  
32 transforms, or otherwise changes environmentally sensitive lands  
33 including, but not limited to, placement of vehicles, structures  
34 debris or any other material objects thereon, introduction c  
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- 1 injection of water or other substance, and removal, displacement or  
2 disturbance of plant or animal species, soil, rock, minerals or water.
- 3 (b) Board. The Board of County Commissioners of Palm Beach County,  
4 Florida.
- 5 (c) Department. The Palm Beach County Department of Environmental  
6 Resources Management.
- 7 (d) Ecosystem. An assemblage of living organisms (plants, animals,  
8 microorganisms, etc.) and nonliving components (soil, water, air,  
9 etc.) that functions as a dynamic whole through organized energy  
10 flows.
- 11 (e) Endangered, Threatened and Rare Species and Species of Special  
12 Concern. Species listed as endangered, threatened, rare or of special  
13 concern by one or more of the following agencies:
- 14 (1) U.S. Fish and Wildlife Service.  
15 (2) Florida Game and Fresh Water Fish Commission.  
16 (3) Florida Committee on Rare and Endangered Plants and Animals.  
17 (4) Florida Department of Agriculture.  
18 (5) Treasure Coast Regional Planning Council.
- 19 (f) Environmentally Sensitive Lands. Ecological sites (ecosites), other  
20 than wetlands, that are designated in the Inventory of Native  
21 Ecosystems in Palm Beach County and on its accompanying aerial  
22 photographs as "A" quality, representing high-quality native Florida  
23 upland ecosystems. These sites are indicated on the aerial  
24 photographs (received on May 30, 1989) that are on file at the  
25 Department of Environmental Resources Management and are incorporated  
26 herein by reference.
- 27 (g) Inventory of Native Ecosystems in Palm Beach County. Reports and  
28 annotated aeriels produced during the study with this title, which was  
29 conducted by consultants under contract to Palm Beach County.
- 30 (h) Mitigation. An action or series of actions that will offset the  
31 adverse impacts to the native upland ecosystems in Palm Beach County  
32 that cause a project to be not permittable.
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1 (i) Wetland. Any persistent water body or area characterized by the  
2 dominance of those submerged and/or transitional wetland species  
3 listed in the Florida Administrative Code, Rule 17-3 and located  
4 within or up to three (3) miles directly offshore of Palm Beach  
5 County. Dominance shall be defined in accordance with Florida  
6 Administrative Code Rule 17-3.021(10) and shall be determined in the  
7 appropriate plant stratum (canopy, subcanopy, or ground cover) as  
8 outlined in Florida Administrative Code Rule 17-3.022(1).  
9

10 Section 4. NOTIFICATION OF AFFECTED PROPERTIES.

11 Prior to or within sixty (60) days of adoption of said Ordinance, the  
12 Department shall identify, through the Property Appraiser's Office, owners of  
13 properties that are designated as Environmentally Sensitive Lands, and shall  
14 send a notification of this Ordinance, via certified mail, to all affected  
15 property owners.  
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17 Section 5. DELETION OF SITES FROM INVENTORY.

18 Pursuant to direction by the Board issued on October 3, 1989, the  
19 Department shall have begun and shall continue to delete from the Inventory of  
20 Native Ecosystems in Palm Beach County those sites or portions of sites:

- 21 (a) Upon which alteration has legally occurred and the environmentally  
22 sensitive land no longer retains the natural values and functions or  
23 which the designation of environmental sensitivity was based; or  
24 (b) Which are granted an exemption under Sections 6, 7, or 8 of this  
25 Ordinance.

26 Once a site is deleted from the Inventory of Native Ecosystems in Pal  
27 Beach County, it shall not be subject to further regulation under this  
28 Ordinance.  
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30 Section 6. EXEMPTION FOR PRIOR ALTERATION.

31 6.01 An exemption from this Ordinance is available for any proje  
32 whereby, upon the effective date hereof:

- 33 a) The environmentally sensitive land has been altered prior to t  
34 adoption of this Ordinance; and  
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1 (b) The land alteration occurred pursuant to valid permits from all  
2 applicable regulatory entities; and

3 (c) The environmentally sensitive land no longer retains the natural  
4 values and functions on which the designation of environmental  
5 sensitivity was based.

6 6.02 This Ordinance shall not apply to existing legal uses for which, upon  
7 the effective date hereof, a level of use has been documented. Documented uses  
8 may continue at this same level; however, an increased level of use or a change  
9 in use shall come under the regulatory scope of this Ordinance.

10 6.03 An applicant who desires an exemption from this Ordinance must submit  
11 an application for exemption to the Department, with accompanying evidence that  
12 he or she is entitled to the exemption pursuant to this section. This  
13 application should include, at a minimum, a description of the nature and date  
14 of the alteration, documentation of prior approval(s), a site location map,  
15 photographs, and, if possible, a recent aerial photograph clearly delineating  
16 the location of the property. The Department shall make a determination of the  
17 applicant's eligibility for an exemption and render a written decision thereon  
18 within thirty (30) days of receipt by the Department of the application for  
19 exemption and all information necessary to make the exemption determination.  
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21 Section 7. EXEMPTION FOR SINGLE-FAMILY RESIDENTIAL LOTS.

22 7.01 An exemption from this Ordinance is available for single-family  
23 residential lots whereby, upon the effective date hereof:

24 (a) The lot contains less than one and one-half (1.5) acres of  
25 environmentally sensitive lands; and

26 (b) The environmentally sensitive lands are not contiguous with other  
27 environmentally sensitive lands or, if contiguous, the total  
28 environmentally sensitive land area would be less than five (5) acres.

29 7.02 An applicant who desires an exemption from this Ordinance must submit  
30 an application for exemption to the Department, with accompanying evidence that  
31 he or she is entitled to the exemption pursuant to this section. This  
32 application should include, at a minimum, a site location map, a copy of the lot  
33 survey, and, if possible, a recent aerial photograph clearly delineating the  
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1 location of the property. The Department shall make a determination of the  
2 applicant's eligibility for the exemption and render a written decision thereon  
3 within thirty (30) days of receipt by the Department of the application for  
4 exemption and all information necessary to make the exemption determination.

5 Section 8. EXEMPTION FOR VESTED DEVELOPMENT RIGHTS.

6 8.01 An exemption from this Ordinance is available for any project for  
7 which, upon the effective date hereof:

8 (a) A building permit has been issued; or

9 (b) A site plan approval has been issued; or

10 (c) A subdivision approval pursuant to County subdivision plat law has  
11 been issued; or

12 (d) A master plan approval has been issued; or

13 (e) Any municipal equivalent of a, b, c, or d, above has been issued; or

14 (f) A complete application for a, b, c, d, or e, above was submitted on or  
15 before August 22, 1989; or

16 (g) A valid Development of Regional Impact Order has been issued; or

17 (h) A sufficiency notification for a Development of Regional Impact has  
18 been issued by the Treasure Coast Regional Planning Council.

19 8.02 An applicant who desires an exemption from this Ordinance must  
20 submit an application for exemption to the Department, with accompanying  
21 evidence that he or she is entitled to the exemption pursuant to this section.  
22 This application must include copies of supporting documentation evidencing the  
23 applicable approval under Section 8.01 (a) through (h). The Department shall  
24 make a determination of the applicant's eligibility for the exemption and render  
25 a written decision thereon within thirty (30) days of receipt by the Department  
26 of the application and all information needed to make the exemption  
27 determination.

28 8.03 If an applicant, in good faith, upon an act or omission of the  
29 County or municipality, has made such a substantial change in position or has  
30 incurred extensive obligations and expenses that application of this Ordinance  
31 would be highly inequitable and unjust by destroying the right acquired, then  
32 the applicant may submit to the Department an application for exemption under  
33 this section, with all accompanying documentation to evidence the existence of  
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1 said vested right. The application shall be reviewed in hearing by a hearing  
2 officer within sixty (60) days of submittal of all documentation needed to  
3 evaluate the requested exemption. The hearing officer shall enter a decision by  
4 written order not later than ten (10) days following conclusion of the hearing.  
5 The order shall include findings of fact and conclusions of law and shall be  
6 deemed final administrative action. The hearing officer shall be appointed, and  
7 hearing procedures adopted, by resolution of the Board of County Commissioners  
8 within sixty (60) days of adoption of this Ordinance.

9 8.04 Any project that has received a development approval pursuant to the  
10 criteria of this Ordinance, established in Section 10, shall be exempt from  
11 further consideration.

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13 Section 9. REVIEW PROCEDURES FOR PROPOSED LAND ALTERATION.

14 9.01 Any application to the County or a municipality involving proposed  
15 alteration of environmentally sensitive lands shall include an environmental  
16 impact study identifying the effects that the proposed alteration would have on  
17 the property. An application form developed by the Department shall be  
18 completed and submitted with the study. It shall be the responsibility of the  
19 Department to review said study and prepare the evaluations and recommendations  
20 specified herein.

21 9.02 The Department's evaluation of the proposed alteration or  
22 development shall be based on this study submitted by the property owner or his  
23 or her designee. For residential lots less than five (5) acres in size, the  
24 Department shall complete the site assessment required pursuant to  
25 Section 9.02(b). This study shall include, but not be limited to, the following  
26 information:

27 (a) Application Form

28 (b) Site Conditions

29 (1) Site location map - with the specific property clearly  
30 indicated.

31 (2) Aerial photograph - with the specific property and acreage  
32 clearly indicated (Scale: 1" - 600' or less).



- (3) Map of existing terrestrial and aquatic vegetation, including exotic species and native plant community types. A description of each native plant community type, including canopy, understory, and ground cover, shall be provided.
- (4) Soil type(s) and condition(s).
- (5) List of endangered, threatened and rare species and species of special concern found on site.
- (6) Colonial bird nesting or roosting areas or areas in which migratory species are known to concentrate.
- (7) Archaeologically and/or historically significant features.
- (8) Geologically significant features.
- (9) Areas of previous disturbance or degradation, including present and past human uses of site.
- (10) Surrounding land uses.

(c) Project Design

- (1) Conceptual footprint of site development, including buildings, roadways, parking areas, utilities, water features, flood control structures, stormwater systems, wellfield locations, landscaped areas, buffer areas, preserve areas, agricultural activities, and other open space areas, at the same scale and as an overlay to vegetation mapping detailed in Section 9.02(b)(3) above.
- (2) Existing zoning.
- (3) Status of development approvals, including permit applications.

(d) Project Operation

- (1) Description of proposed operations to be performed on site, including use, storage, handling, or production of substances known to be harmful to plants and/or animals.
- (2) Identification of any pollutants expected to be emitted during project operation.
- (3) Identification of solid wastes generated and disposal methods expected to be used.

(e) Project Alternatives

- (1) Discussion of project alternatives should be provided, including options considered and rejected and the rationale for rejection of each option considered.



1 (2) Mitigation considerations should be discussed in detail as they  
2 relate to possible loss of habitat or impact on endangered,  
3 threatened or rare animal and plant species, or species of  
4 special concern.

5 9.03 Any additional information reasonably determined to be required by  
6 the Department must be requested by the Department within thirty (30) days of  
7 receipt of the above information. In the event no such request is made by the  
8 Department within said thirty (30) day period, then it shall be conclusively  
9 presumed that the application is in all respects complete. For the purpose of  
10 this ordinance, the applicant shall not have met the procedural requirements for  
11 the submittal of a complete application for a development order until a complete  
12 environmental study report has been submitted.

13 9.04 Upon receipt of the complete application, the Department shall  
14 review and evaluate the environmental impacts of said proposal in light of the  
15 goals of this Ordinance. The Department shall work with the applicant and other  
16 environmental agencies to provide for the best possible development proposal to  
17 satisfy the goals of this ordinance as well as allowing for sound development of  
18 the property. To allow approval of the development proposal, the Department  
19 shall provide its comments to the appropriate governmental development review  
20 authority or authorities within forty-five (45) days of receipt of a complete  
21 application so that conditions may be placed on the approval reasonably  
22 necessary to minimize adverse environmental impact, as described in this  
23 Ordinance. For those projects that do not otherwise require a development  
24 order, the Department shall issue an approval by letter if the applicant meets  
25 the standards listed in Section 10 within forty-five (45) days of receipt of a  
26 complete application.

27 9.05 Should the Department decide that public acquisition of the property  
28 should be considered as the best option to protect these environmentally  
29 sensitive lands proposed for development, the Department shall initiate action  
30 before the Board of County Commissioners and/or other appropriate municipal  
31 entity, for consideration of such possibility. Action on the development  
32 application shall be deferred by the governmental development review authority  
33 for a period of time not to exceed sixty (60) days while said agencies consider  
34 the public acquisition of said land. At the expiration of the sixty (60) day  
35 period, the development application shall be allowed to proceed through the



1 development approval process, subject to appropriate conditions as described in  
2 Section 10, unless the land has been acquired or interest in public acquisition  
3 is formally confirmed.

4 9.06 Should the Board and/or other municipal entity decide that public  
5 acquisition is the best option to protect all or part of these environmentally  
6 sensitive lands proposed for development, approval of the proposed development  
7 will be deferred for a one hundred eighty (180) day period. This will allow  
8 time to effect public acquisition. The Board shall adopt acquisition criteria  
9 by resolution prior to consideration of any acquisition.

10 9.07 Should the Board and/or other municipal entity decide not to acquire  
11 all or part of the particular site containing environmentally sensitive lands,  
12 the development application, as modified for any lands acquired by the public,  
13 shall be allowed to proceed through the development approval process, subject to  
14 appropriate conditions as described in Section 10.

15 9.08 The applicant shall submit one hundred dollars (\$100) plus ten  
16 dollars (\$10) per acre of environmentally sensitive lands with the environmental  
17 study to defer the Department's cost of processing. The application fee is  
18 limited to a maximum of five thousand dollars (\$5,000). No application shall be  
19 deemed complete without the specified fee payment.

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21 Section 10. APPROVAL CRITERIA FOR PROPOSED LAND ALTERATION.

22 (a) After consideration of the Department's recommendations, the proposed  
23 land alteration shall be approved by the appropriate governmental  
24 development review authority if:

25 (1) The project design provides for the protection and preservation  
26 of the values and functions of the environmentally sensitive  
27 lands; and

28 (2) At a minimum, twenty-five percent (25%) of the environmentally  
29 sensitive lands shall be set aside in a preserve status. Lands  
30 to be preserved shall be identified based on the quality of  
31 habitats, the presence of listed species, proximity to other  
32 natural areas and other relevant factors. The appropriate  
33 governmental development review authority shall have the option  
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- 1 to designate the portion of environmentally sensitive lands which  
2 shall be preserved. Such areas shall be preserved in viable  
3 condition, with intact canopy, understory and groundcover; and
- 4 (3) A management plan of the preserve area shall be prepared by the  
5 applicant and shall include, but not be limited to, eradication  
6 and continued monitoring and removal of exotic species, and  
7 fencing requirements. Periodic controlled burning or other  
8 mechanical methods that would simulate the natural processes of  
9 the natural historic fire regime may be required for some areas;  
10 and
- 11 (4) For those lands identified for preserve status, appropriate deed  
12 restrictions shall be placed on said lands and recorded in the  
13 public records of Palm Beach County, or they may be dedicated to  
14 a public entity or approved private conservation group for the  
15 purposes of preservation, or appropriate restrictive conservation  
16 easements may be established, or such other similar protective  
17 measures as determined by the appropriate governmental entity,  
18 upon completion of all review processes hereunder; and
- 19 (5) Clustering of development on less sensitive portions of the site  
20 shall be considered; and
- 21 (6) For a site on which endangered, threatened or rare species or  
22 species of special concern (listed species) are present, one of  
23 the following criteria can be satisfied:
- 24 a) The applicant successfully demonstrates that the proposed  
25 action will not preclude the continued survival and  
26 viability of those listed species located on the site; or
- 27 b) The applicant presents a plan for relocation, either on-site  
28 or off-site, for those listed species, which has been  
29 reviewed and approved by all appropriate agencies.
- 30 (b) If the environmentally sensitive lands, together with on-site  
31 wetlands, are greater than six hundred forty (640) acres in size and  
32 are owned by a single entity, the County or a municipal entity shall  
33 allow for the consideration of a master plan which provides a minimum  
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1 twenty-five percent (25%) preserve area and flexibility to define the  
2 preserve area or adjust its boundaries accordingly as development  
3 proceeds. This master plan shall include the information identified  
4 in Section 9.02(b) to enable the Department to distinguish intra-site  
5 differences in the quality of the environmentally sensitive lands.  
6 This master plan shall be submitted in lieu of the submittal  
7 requirements outlined in Section 9, with the exception of  
8 Section 9.08 (fees). For lands identified for preserve status,  
9 protective measures as determined acceptable by the appropriate  
10 governmental entity shall be implemented. Upon consideration,  
11 approval will be granted provided that:

12 (1) The minimum twenty-five percent (25%) preserve area is  
13 maintained; and

14 (2) The master plan and designated preserve boundaries are approved  
15 by the County or municipal entity.  
16

17 Section 11. APPEALS.

18 An applicant may appeal a final determination of the Department made  
19 pursuant to Sections 5, 6, 7, or 8.02 of this Ordinance to a hearing officer in  
20 the same manner as set forth in Section 8.03. Decisions of the hearing officer  
21 shall be final. An applicant or the Department may appeal a final decision of  
22 the hearing officer within thirty (30) days of the rendition of the decision by  
23 filing a petition for Writ of Certiorari in Circuit Court of the Fifteenth  
24 Judicial Circuit in and for Palm Beach County, Florida.  
25

26 Section 12. VIOLATIONS, ENFORCEMENT, PENALTIES.

27 12.01 Failure to comply with the requirements of this Ordinance or any  
28 permit or approval granted or authorized hereunder shall constitute a violation  
29 of this Ordinance. Violations of the provisions of this Ordinance, upon  
30 conviction, shall be punished by a fine not to exceed five hundred dollars  
31 (\$500) per violation, per day, or by imprisonment in the County jail not to  
32 exceed sixty (60) days, or by both fine and imprisonment pursuant to the  
33 provisions of Section 125.69, Florida Statutes. Additionally, damage to the  
34 environmentally sensitive lands may result in an order to restore to  
35 pre-existing site conditions. In addition to the sanctions contained herein,



1 the County and/or other municipal entity may take any other appropriate legal  
2 action, including, but not limited to, administrative action and requests for  
3 temporary and permanent injunctions to enforce the provisions of this Ordinance.  
4 It is the purpose of this Ordinance to provide additional cumulative remedies.

5 12.02 Violations of this Ordinance shall be referred by the Department to  
6 the Groundwater and Natural Resources Protection Board for corrective actions  
7 and civil penalties and coordinated with the appropriate municipal entity, if  
8 applicable.

9 12.03 All monies collected pursuant to Sections 10 and 11 shall be  
10 deposited in an Environmentally Sensitive Lands Acquisition Fund to be  
11 established for the acquisition and management of environmentally sensitive  
12 lands and wetlands.

13  
14 Section 13. COORDINATION WITH MUNICIPALITIES AND OTHER AGENCIES.

15 The County shall coordinate with municipalities and other agencies  
16 regarding the purchase, protection and passive use of the environmentally  
17 sensitive lands and their component species that may be acquired under the  
18 provisions of this Ordinance.

19  
20 Section 14. REPEAL OF LAWS IN CONFLICT.

21 All local laws and ordinances applying to the unincorporated areas of Palm  
22 Beach County in conflict with any provisions of this Ordinance are hereby  
23 repealed to the extent of such conflict.

24  
25 Section 15. SEVERABILITY.

26 If any section, paragraph, sentence, clause, phrase, or word of this  
27 Ordinance is for any reason held by the Court to be unconstitutional,  
28 inoperative or void, such holding shall not affect the remainder of this  
29 Ordinance.

30 Section 16. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

31 The provisions of this Ordinance shall become and be made a part of the  
32 Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this  
33 Ordinance may be renumbered or relettered to accomplish such, and the word  
34 "ordinance" may be changed to "section," "article," or any other appropriate  
35 word.



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APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach  
County, Florida, on the 17th day of October, 1989.

By Carl M. Hines  
Vice Chairman  
JOHN B. DUNKLE, CLERK  
Board of County Commissioners  
By Judith E. Croshaw  
DEPUTY CLERK  
50 08703

County Attorney

EFFECTIVE DATE: Acknowledgement from the Department of State received on the 2nd day of November, 1989, at 10:30 A..M., and filed in the Office of the Clerk of the Board of County Commissioners of Palm Beach County, Florida.